

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 24

CONSEJO DE LA SALUD DE LA COMUNIDAD DE LA  
PLAYA-PONCE, INC. d/b/a CENTRO DE DIAGNOSTICO Y  
TRATAMIENTO DE LA PLAYA-PONCE (CDT)<sup>1</sup>

Employer

and

UNITED STATES STEEWORKERS OF AMERICA,  
AFL-CIO<sup>2</sup>

Petitioner

24-RC-8427

24-RC-8428

24-RC-8429

24-RC-8430

DECISION AND DIRECTION OF ELECTION

Upon the filing of these petitions under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held December 7 and 8, 2004, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine appropriate units for collective bargaining.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. On November 19, 2004 Consejo de la Salud de la Comunidad de la Playa-Ponce, Inc., d/b/a Centro de Diagnostico y Tratamiento de la Playa-Ponce (CDT), hereinafter the Employer), was served by United States mail with a copy of the petitions filed in Cases 24-RC-8827, 24-RC-8828, 24-RC-8829 and 24-RC-8830 together with a notice of hearing that indicated that a hearing regarding these petitions would be conducted on December 2, 2004.<sup>3</sup> On November 29, 2004, the Hearing Officer sent the Employer additional copies of these petitions and another "Questionnaire on Commerce Information" Form NLRB-5081, and other related documents and reminded the Employer that it was required to provide the Region with

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<sup>1</sup>The Employer's name appears as amended by the Petitioner at the hearing.

<sup>2</sup>The name of the Petitioner has been corrected to reflect its AFL-CO affiliation.

<sup>3</sup>In addition to the notice of hearing, the Region also sent the Employer a "Scheduling of Joint Conference and Notice of Representation Hearing" which provides the parties an opportunity to reach agreement to conduct an election without a formal hearing. Together with this document, the Region sent a "Questionnaire on Commerce Information" Form NLRB-5081 and requested that the Employer complete the same in order to determine whether the Board had jurisdiction over the Employer.

information regarding commerce. As the requested commence information was not submitted, on November 30, 2004 the Region served the Employer with a subpoena Duces Tecum pursuant to Board's decision in *Tropicana Products, Inc.*, 122 NLRB 121 (1959) and containing a return date of December 2, 2004.

On December 1, 2004, the day before the scheduled hearing, the Employer's counsel filed a "Notice of Appearance and Petition for Extension of Time" acknowledging receipt of the these documents including the aforementioned *Tropicana* subpoena and requesting the postponement of the hearing due to a previously scheduled hearing in local court. Although the Employer's counsel requested that the hearing be held on December 13, 15 or 16, he provided no explanation why he was unavailable prior to December 13 for any dates after December 2, 2004.

The hearing was rescheduled to December 6, 2004. The record reflects that the Employer and its legal counsel were notified telephonically and by service of an Order Rescheduling Hearing by regular U.S. mail of the rescheduling of the hearing to December 6. Despite this, neither the Employer nor anyone acting on its behalf appeared at the hearing. Nonetheless, a hearing was conducted in this matter during which evidence was received regarding the effect of the Employer's business upon interstate commerce; the status of the Petitioner as a labor organization; and evidence regarding the appropriateness of the petitioned units.

In this regard, the record reflects that the Employer operates a non-profit primary health care facility<sup>4</sup> that provides outpatient medical and related health care services at its facility in Ponce, Puerto Rico. The facility, administered by Executive Director Monserrate Salichs and Medical Director Dr. Awilda García, employs between 100 and 120 employees of which about 81 are included in the bargaining units found appropriate herein. The services provided by the Employer at its facility include diagnostic and treatment, radiology, laboratory, dental and pharmacy.<sup>5</sup> At least 60 percent of the services rendered by the Employer are provided to indigent patients, 30 percent to Medicare patients and 10 percent to private patients. The record reflects that the Employer receives at least \$4,000,000.00 in revenues on an annual basis from the U.S. Government and at least \$1,216,000.00<sup>6</sup> from the government of Puerto Rico for services rendered. The Employer also receives another 10 percent of its total revenues from health care insurance providers for services rendered to private patients.

The record reflects that the Employer purchases its own cars, x-ray machines and film, diagnostic equipment, chemical solutions, computers, medicine, blood tests and other goods and products. More particularly, during the past twelve months, the Employer purchased two vehicles (Ford Crown Victoria and Toyota) from a local dealer who imported the same from

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<sup>4</sup>The Puerto Rico Primary Care Association, Inc.'s (PRPCA) official website ([www.saludprimariapr.org](http://www.saludprimariapr.org)), reflects that the Employer is a member of this association. According to the website, the PRPCA represents corporations, organizations and healthcare professionals who provide preventive and primary health care services to communities that are funded partially or totally by federal funds under Section 330 of the United States Public Health Act, as amended, and under Title III of the 1990 Ryan White Act.

<sup>5</sup>The description of the Employer's business discussed herein is based upon the testimony of one X-ray technician and a billing/purchasing department employee.

<sup>6</sup>The Puerto Rico government pays the Employer up to \$38.00 per patient and the Employer treats approximately 32,000 patients annually.

outside of Puerto Rico and were valued at \$28,000.00 and \$12,000.00 to \$15,000.00, respectively<sup>7</sup>. The record also reflects that during this same period, the Employer purchased medicine and related products valued in excess \$500,000.00 from distributors in Puerto Rico including Pfizer and Abbot Laboratories; purchased about \$50,000.00 for chairs and other office equipment from local suppliers; annually purchases labels valued in excess of \$20-22,000.00 from suppliers outside of Puerto Rico; purchased an x-ray machine valued in excess of \$60,000.00 from a hospital supplier who in turn purchased the machine from a manufacturer located outside of Puerto Rico; and purchased at least \$24-36,000.00 a year in x-ray supplies.

Under the Board's Tropicana rule, the Board will assert jurisdiction over an employer who has refused to provide information to enable the Board to determine whether the employer meets the Board's jurisdictional standards, if the record at a hearing establishes that the Board has statutory jurisdiction, Tropicana Products, 122 NLRB 121 (1958). This rule was fashioned to advance the policies underlying the Act and promote the prompt resolution of cases. The Act extends jurisdiction to all cases involving enterprises whose operations affect interstate commerce. The Board's jurisdiction has been construed to extend to all such conduct as might constitutionally be regulated under the commerce clause, subject only to the rule of *de minimis*. NLRB v. Fainblatt, 306 U.S. 601, 606 (1939). This rule provides that the Board will assert jurisdiction over an employer whose impact upon interstate commerce is more than "*de minimus*." The Board has held that revenues as little as \$1,500 derived from interstate commerce are a sufficient basis for the Board's assertion of statutory jurisdiction, Marty Levitt, 171 NLRB 739 (1968); Pet Inn's Grooming Shoppe, 220 NLRB 828 (1975).

As the Employer did not provide information regarding commerce nor submit sufficient evidence to conclude that the Board had commerce over its operations, it was necessary that the Region issue a subpoena to require the Employer to provide the documentation needed to determine whether the Board had jurisdiction. Therefore, a hearing was necessary to assess with exactitude the impact of the Employer' operations upon interstate commerce. The Employer was provided sufficient notice of the date of the hearing to enable it to attend, and prior to the hearing, the Employer even acknowledged its receipt of this notice and subpoena. At no time has the Employer asserted that its attendance at hearing was precluded by circumstances beyond its control. As in Tropicana, the Employer here failed to appear at hearing and failed to provide information necessary to determine whether its operations satisfy the Board's jurisdictional standards.

In the absence of the Employer, testimonial evidence from employees was received into evidence at the hearing herein, regarding the jurisdictional issue. That evidence indicates that the Employer has a more than *de minimus* impact upon interstate commerce such that the Board is warranted in asserting jurisdiction over its enterprise. The record reflects that the Employer receives at least \$4,000,000.00 on an annual basis from the U.S. Government and at least \$1,216,000.00 from the Puerto Rico government for services rendered at its facility. The record also reflects that during the past twelve months period, the Employer purchased two vehicles (Ford Crown Victoria and Toyota) that were purchased from a local dealer who imported the same from outside of Puerto Rico. The total value of these two vehicles was at least \$40,000.00. Additionally, the record reflects that the Employer makes routine purchases of medicine and other related products from local distributors such as Pfizer and Abbot Laboratories valued in excess \$500,000.00. In this respect, I take administrative notice that these pharmaceuticals are themselves engaged in interstate commerce. The evidence also reflects

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<sup>7</sup>The record reflects that the Employer obtained tax exemptions from the appropriate Puerto Rico tax authority in order to avoid paying excise tax on the imported automobiles.

that on a yearly basis the Employer purchases chairs and other office equipment valued in excess of \$50,000.00 from local suppliers and about \$20,000.00 for labels from suppliers located directly outside of Puerto Rico. Additionally, the Employer purchased a \$60,000.00 x-ray machine from a hospital supplier who, in turn, purchased the machine from a manufacturer located outside of Puerto Rico. Finally, the record reflects that the Employer purchases at least \$24-36,000.00 a year in x-ray supplies. Thus, clearly the Employer is engaged in interstate commerce and it will effectuate the purposes of the Act to assert jurisdiction over the Employer. *East Oakland Health Alliance*, 218 NLRB 1270 (1975).

3. The Petitioner is an organization with an office and place of business in Bayamón, Puerto Rico and is affiliated with the American Federation of Labor, Congress of Industrial Unions (AFL-CIO). It negotiates collective bargaining agreements with employers in the Puerto Rico as well as with agencies of the federal government, municipalities, construction contractors, newspapers and other industries. The record reflects that the Petitioner has about 32 collective bargaining agreements in Puerto Rico covering about 20000 to 28000 employees. These collective bargaining agreements address employee wages, benefits, working conditions, and hours of employment, among other subjects. Members of the Petitioner participate in matters related to their representation by electing local presidents and shop stewards that deal with employee concerns at each facility. Accordingly, I find that as the Petitioner is an organization in which employees participate and exists for the purpose of dealing with employers concerning wages, rates of pay, hours of employment or conditions of work of its employees, I find that the Petitioner is a labor organization within the meaning of Section 2(5). *Alto Plastics Mfg., Corp.* 136 NLRB 850 (1962).

4. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9(b) and Section 2(6) and (7) of the Act.

5. The bargaining units, as modified at the hearing and as set forth herein, essentially conform to the provisions of Section 103.30 of the Board's Rules and Regulations applicable to acute care institutions that include outpatient care clinics such as the Employer. Accordingly, as these bargaining units are essentially ones that are presumptively appropriate under these provisions, I find that the following employees of the Employer constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

24-RC-8427

Included: All warehouse and housekeeping employees employed by the Employer at its Ponce, Puerto Rico facility.

Excluded: All other employees, doctors, confidential employees, guards and supervisors as defined by the Act.

There are approximately 12 employees in this unit.

24-RC-8428

Included: All registered nurses employed by the Employer at its location in Ponce, Puerto Rico.

Excluded: All other employees, confidential employees, guards and supervisors as defined by the Act.

There are approximately 12 employees in this unit.

24-RC-8429

Included: All clerical and secretarial employees, switchboard operators, and computer operators employed by the employer at its Ponce, Puerto Rico facility.

Excluded: All other employees, doctors, confidential employees, guards and supervisors as defined by the Act.

There are approximately 20 employees in this unit.

24-RC-8430

Included: All social workers, licensed practical nurses, medical technicians, X-Ray technicians, laboratory technicians, pharmacist assistants, family healthcare workers, and mammography/sonogram technicians employed by the Employer at its Ponce, Puerto Rico facility.

Excluded: All other employees, doctors, confidential employees, guards and supervisors as defined by the Act.

There are approximately 37 employees in this unit.

## **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in each of the units found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>8</sup> Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before

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<sup>8</sup>As provided for in Section 103.20 of the Board's Rules and Regulations, the Employer is required to post copies of the Board's Official Notice of Election in conspicuous places at least 3 full working days (excluding the day of the election, Saturdays, Sundays, and holidays) prior to the date of the election; said notices are to remain posted until the end of the election. Failure to post the election notices as required by the Board's Rules and Regulations shall be grounds for setting aside the election whenever proper and timely objections are filed. An employer shall be conclusively deemed to have received copies of the election notices unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of said notices.

the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United States Steelworkers of America, AFL-CIO.

### LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *North Macon Health Care Facility*, 315 NLRB 359 (1994); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of election eligibility lists, one for each unit found appropriate herein, containing the full names and addresses of all the eligible voters in the four units found appropriate herein, shall be filed by the Employer with the undersigned who shall make the lists available to all parties to the election. In order to be timely filed, such lists must be received in the Regional Office, La Torre de Plaza Suite 1002, 525 F.D. Roosevelt Ave., San Juan, Puerto Rico 00918-1002, on December 27, 2004. These lists may be submitted by facsimile transmission. No extension of time to file these lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. This request must be received by the Board in Washington by December 30, 2004<sup>9</sup>

Dated December 17, 2004



/s/

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<sup>9</sup>In accordance with section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.